

REMARKS/ARGUMENTS

35 USC §103

The Office rejected **claims 1-13** as being obvious over Chang (U.S. Pat. No. 5,893,605) in view of Halliday (U.S. Pat. No. 5,149,120). The applicant respectfully disagrees, especially in view of the amendments herein.

Not All Elements Are Present in the '358 Patent

It is well established that anticipation under 35 U.S.C. § 102 requires the presence in a single prior art disclosure of **each and every element of a claimed invention**. *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 U.S.P.Q.2D (BNA) 1051, 1053 (Fed. Cir. 1987); *Carella v. Starlight Archery*, 804 F.2d 135, 138, 231 U.S.P.Q. (BNA) 644, 646 (Fed. Cir.), modified on reh'd, 1 U.S.P.Q.2D (BNA) 1209 (Fed. Cir. 1986); [**7] *Jamesbury Corp. v. Litton Indus. Prods., Inc.*, 756 F.2d 1556, 1560, 225 U.S.P.Q. (BNA) 253, 256 (Fed. Cir. 1985); *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1458, 221 U.S.P.Q. (BNA) 481, 485 (Fed. Cir. 1984); *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548, 220 U.S.P.Q. (BNA) 193, 198 (Fed. Cir. 1983).

With respect to amended claim 1 it is noted that claim 1 (and claims 2-7 by virtue of their dependence on amended claim 1) requires that all cross bars are "...rotatably coupled to each other via **a first, second, third, and fourth axis...**", that the "...spacer element is configured to maintain a **minimum distance of at least 1 cm between the cross bars at the point of rotatable coupling...**", and that "...the **spacer element is coupled to and extends along the at least one of the first, second, third, and fourth axes...**". These elements are clearly not taught by Chang and Halliday.

Similarly, amended claim 8 (and claims 9-13 by virtue of their dependence on amended claim 1) is drawn to a "...**spacer that has a continuous channel** formed therein...", wherein the spacer has first and second ends that "...**engage with the first and second cross bars** such that the first and second cross bars **remain at a distance of at least 1 cm from each other at a point of rotatable connection of the first and second cross bars** as the collapsible chair collapses...". Again, none of these elements are taught by Chang and Halliday.

It is noted that the examiner failed to provide any support for a correlation between the claim elements and the alleged corresponding structures in the cited art. Indeed, the examiner merely states that "...Chang shows a collapsible chair [followed by an incomplete list of claim elements without any further reference to Chang]..." and then goes on to state that "...Halliday teaches a spacer element that maintains a minimum distance of at least 1 cm between the cross bars that are rotatably coupled to each other [which one more lacks any further reference to Chang]..." Should the office maintain his position, the applicant respectfully requests detailed supporting reference to the allegedly corresponding structures.

It is still further noted that the examiner also failed to provide any separate discussion of the two independent claims, let alone any separate discussion of the respective dependent claims. Regarding claim 2, the examiner failed to show presence of a pedestal connector having a supplemental spacer. Regarding claim 3, the examiner failed to show presence of a second spacer element. Regarding claim 4, the examiner failed to establish that the spacer element has a cylindrical shape. Regarding claim 5, the examiner failed to show that at least one of the spacer elements has a channel in which the axis is at least partially disposed. Regarding claim 6, the examiner failed to show that at least one of the spacer elements is manufactured from a synthetic polymer or metal. Regarding claim 7, the examiner failed to show that the spacer element maintains a minimum distance of at least 1.5 cm between the cross bars that are rotatably coupled to each other.

Regarding claim 9, the examiner failed to show that the collapsible chair is configured such that the spacer reduces collapsibility of the chair as compared to the chair without the spacer. Regarding claim 10, the examiner failed to show that the spacer has a cylindrical shape. Regarding claim 11, the examiner failed to show that the chair is proportioned for a child. Regarding claim 12, the examiner failed to show that the first and second cross bars remain at a distance of at least 1.5 cm from each other as the collapsible chair collapses, and regarding claim 13, the examiner failed to show that the spacer is manufactured from a synthetic polymer or metal.

Problem Solved By the Claimed Invention Is Unrecognized

It is pointed out that in considering motivation in the obviousness analysis, the problem

examined is not the specific problem solved by the invention but the *general problem that confronted the inventor before the invention was made*. See, e.g., Cross Med. Prods., Inc. v. Medtronic Sofamor Danek, Inc., 424 F.3d 1293, 1323 (Fed. Cir. 2005). In the instant case, the general problem with collapsible chairs having a quad configuration is that upon folding of the chair the cross braces act as scissors and will pinch or even seriously injure one or more fingers where the user holds the chair at the cross bars during folding. Thus, it is the lack of a safe cross bar arrangement that is the general problem and not the desire "...to prevent inadvertent folding of the chair and to reduce collapsibility..." as alleged by the examiner.

On a finer note, it should also be noted that the applicant defined the meaning of the term "reduce collapsibility" to mean that the collapsed chair has an increased width and/or length as compared to the same collapsed chair without the spacer element. As a consequence, it should be particularly appreciated that the spacers will minimize the likelihood of such injuries, while maintaining the ease of operation of contemplated chairs. Therefore, the spacers have no impact on the collapsing operation.

The Cited References Lack Suggestion or Motivation

It should further be pointed out that "...*particular findings* must be made *as to the reason* the skilled artisan, with no knowledge of the claimed invention, would have selected these components *for combination in the manner claimed...*" (In re Kotzab, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000)), and that "...there must be some *motivation, suggestion, or teaching of the desirability* of making the specific combination that was made by the applicant..." (In re Dance, 160 F.3d 1339, 1343, 48 USPQ2d 1635, 1637 (Fed. Cir. 1998)). Even post KSR, it *remains necessary to identify the reason why a person of ordinary skill in the art would have combined the prior art elements in the manner claimed*.

None of these critical requirements are met by Malsbury or Halliday. Indeed, Malsbury is entirely silent on the issue of any spacer and is solely concerned with providing a can holder in a collapsible chair. On the other hand, Halliday is concerned with inadvertent closing of a wheel chair and provides a locking mechanism to a single cross brace. Ignoring the incompatibility of the cited references, it is further noted that the claim requires reduced collapsibility of the chair,

which is defined as the chair having an increased width and/or length (as compared to the same collapsed chair without the spacer element). There is absolutely nothing in Chang or Halliday that would suggest or motivate such modification. In fact, such reduced collapsibility is contrary to the concept of having a collapsible chair, and so also not motivated by the person of ordinary skill in the art. Based on the above arguments and amendments, the rejection of claims 1-13 as being obvious over Chang in view of Halliday is improper and should be withdrawn.

The Office further rejected **claims 1-13** as being obvious over Chang in view of Aycock (U.S. Pat. No. 5,975,626). The applicant respectfully disagrees.

First, it is noted that the examiner's reasoning for this rejection is substantially identical with the rejection of claims 1-13 over Chang and Halliday. Therefore, the same arguments and defects as pointed out above apply (not all elements are present, lack of identification of allegedly present elements, lack of separate discussion of independent claims, lack of separate discussion of respective dependent claims, improper motivation, misinterpretation of claims, lack of proper suggestion or motivation to combine references).

Second, with respect to Aycock it is noted that Aycock teaches a support element that bears forces from two cross members. Viewed from a different perspective, Aycock is concerned with replacement of a locking member (as *e.g.*, shown in prior art Fig.1) by a weight-bearing element. Nowhere in Aycock is there any reference or suggestion to reduce collapsibility of the chair. Based on the above arguments and amendments, the rejection of claims 1-13 as being obvious over Chang in view of Aycock is improper and should be withdrawn.

The Office still further rejected **claims 1-13** as being obvious over Chang in view of Ku (U.S. Pat. App. 2003/0006632). The applicant once more respectfully disagrees.

Again, it is noted that the examiner's reasoning for this rejection is substantially identical with the rejection of claims 1-13 over Chang and Halliday. Therefore, the same arguments and defects as pointed out above apply (not all elements are present, lack of identification of allegedly present elements, lack of separate discussion of independent claims, lack of separate discussion of respective dependent claims, improper motivation, misinterpretation of claims, lack of proper suggestion or motivation to combine references).

Furthermore, with respect to Ku it should be appreciated that Ku teaches a control device similar to Aycock with an added cavity that pivotably supports a seat/backrest structure. Thus, it is readily apparent that Ku is concerned with providing reclining ability to a folding chair. Again, nowhere in Ku is there any reference or suggestion to reduce collapsibility of the chair. Based on the above arguments and amendments, the rejection of claims 1-13 as being obvious over Chang in view of Ku is improper and should be withdrawn.

Request For Allowance

Claims 1-13 are pending in this application. The applicant requests allowance of all pending claims.

Respectfully submitted,
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Date: 12/04/08

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